the plaintiff. The whole matter of fraud may on that preliminary inquiry be investigated as fully as in Chancery, and relief administered by awarding possession of the property, Glenn v. Fowler, 8 G. & J. 340. But to obtain this return in the first instance, the defendant is required to enter into a bond with security for the return of the property if it is adjudged, which may be termed for distinction's sake a *retorno habendo* bond, see 1 Evans' Harris, 47. In the case of Montgomery v. Black, 4 H. & McH. 391, a negro replevied had been in possession of one of several co-executors at the time of the latter's death, and afterwards continued in the possession of his executor, the defendant, for four years before the replevin issued. Upon motion by the defendant for a return, the Court said that they were not to take into consideration the right of property, that the possession of one executor is the possession of all, and that the defendant did not obtain the possession with proper authority or right from the plaintiffs, the surviving co-executors, and the motion was accordingly overruled.

In Serjt. Williams' note (3) to Mounson v. Redshaw, 1 Wms. Saund. 195, an account is given of the proceedings by *withernam* and *scire facias* against the pledges and the sheriff pursuant to this Statute, which, however, in England have long since given away to an action on the case brought directly against the sheriff for taking none or insufficient pledges. In Blackett v. Crissop, 1 Ld. Raym. 278, it was held, though it was not the precise question in the case, that the sheriff might take a bond under this Statute instead of pledges, and that such a bond would answer the intent of the Act that requires pledges, for the obligors are sureties. This bond, however, is taken for the sheriff's indemnity, and in England is not assignable, though the defendant might proceed in the sheriff's name against the sureties, and is not to be confounded with the bond which the sheriff is required to take under Stat. 11 Geo. 2, c. 19, s. 23 *q. v.*; since the sheriff may take a security for the return of the goods as before, Austen v. Howard, 7 Taunt. 28. With us, however, the replevin *bond is always **101** taken by the Clerks of the County Courts, and in the name of the party from whose possession the goods are to be replevied, and in this respect, and also in the nature of the condition, is substantially the same as the bond under Stat. 11 Geo. 2, c. 19, cited above.[14]

But the responsibility of the clerk is that of the sheriff, and he is accordingly liable for taking an insufficient or no bond, though the action here would probably be brought on his official bond as clerk. It was said in Tregose v. Wennel, Cro. Car. 594, that if the sheriff do not take pledges upon a *writ* of replevin the judgment will be erroneous, and in Moyser v. Gray, Cro. Car. 446, case for delivering cattle without finding pledges, it was held that the officer making the replevin could not receive money from a plaintiff by way of pledges, because the party is interested to have the benefit of the pledges by a *scire facias* if he recover, but he hath not remedy to have the money from the officer, being in his purse, if he should recover. And it is laid down in Bac. Abr. Replevin, D. that the pledges are required not only to be sufficient in estate, but also in law, and under no disability, and therefore an infant, *feme covert*, or body politic or corporate is not to

[14] Herzberg v. Sachse, 60 Md. 426.